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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Note verbale dated 31 May 2001 from the Permanent Mission of Iraq to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human rights

The Permanent Mission of the Republic of Iraq to the United Nations Office at Geneva presents its compliments to the United Nations High Commissioner for Human Rights and has the honour to send an attached copy of the explanatory note* presented by the Government of the Republic of Iraq concerning resolution 2001/14 approved by the Commission on Human Rights during its fifty-seventh session, and requests the circulation of this note as an official document of the fifty-eighth session of the Commission.

* Reproduced as received, in Arabic and English only.

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Annex

Explanatory note submitted by the Government of the Republic of Iraq concerning resolution 2001/14 entitled "Situation of human rights in Iraq" adopted by the Commission on Human Rights at its fifty-seventh session

At its fifty-seventh session, the Commission on Human Rights adopted an inequitable resolution on the situation of human rights in Iraq. A study of the text of the resolution shows, beyond any shadow of a doubt, that it reiterates the previous resolutions that its sponsors are in the habit of submitting to the Commission. It lacks objectivity and contains many fallacies designed to distort the facts and mislead the members of the Commission. This obviously reflects the hostile positions of some of the resolution's sponsors, particularly the United States of America, the United Kingdom and the Zionist entity, towards Iraq, otherwise, how is it possible to explain the disregard that the resolution's sponsors showed for the adverse effects of the economic sanctions that have been imposed on Iraq since 1990 and of the daily illegal US-British aerial bombardments the aim of which is to kill civilians and destroy Iraq's economic infrastructure?

The ongoing economic sanctions and the aerial bombardments constitute acts of aggression designed to reduce an entire people to starvation, deny them access to medicine and prevent them from developing their economic resources. This is incompatible with the legal, moral and humanitarian principles embodied in international human rights instruments.

The Government of the Republic of Iraq is submitting this explanatory note in order to highlight the fallacies contained in that resolution and reveal the truth in the hope that it will be accorded due attention by all States.

1. Subparagraph (b) of the fourth preambular paragraph refers to 16 resolutions adopted by the Security Council. However, the resolutions referred to are unrelated to the accusations contained in the Commission on Human Rights resolution concerning the situation of human rights in Iraq since, in actual fact, they relate to the ceasefire, the elimination of weapons of mass destruction, compensation, authorization for Iraq to sell petroleum in order to purchase food and medicine, the return of prisoners of war and extension of the validity of the Memorandum of Understanding concluded between Iraq and the United Nations.

This confirms the inappropriate nature of the reference made to the above-mentioned series of resolutions and also reveals the deliberate intention of the resolution's sponsors to provide erroneous information designed to deceive and mislead others by giving the impression that Iraq had not fulfilled its human rights obligations in accordance with the terms of those resolutions which, in fact, had no bearing on human rights or on the allegations propagated against Iraq in the field of human rights (the attached annex specifies the subject matter of the Security Council resolutions referred to in the Commission on Human Rights resolution on Iraq).

2. According to the fifth preambular paragraph, the concluding observations of human rights treaty-monitoring bodies concerning Iraq indicate that the Government of Iraq remains bound by its treaty obligations.

The Government of Iraq wishes to point out that the drafters of the resolution were inaccurate in this regard, since the wide range of human rights problems were not a reason for Iraq's failure to fulfil its obligations. The reason was the comprehensive embargo imposed on Iraq, which has affected the daily lives of civilians, as stated in the observations of the following treaty-monitoring bodies:

- In paragraph 3 of its General Comment No. 8 contained in document E/C.12/1997/10, the Committee on Economic, Social and Cultural Rights indicated that "the Committee is aware that sanctions almost always have a dramatic impact on the rights recognized in the International Covenant on Economic, Social and Cultural Rights".

According to paragraph 5 of that General Comment, United Nations studies which have analysed the impact of sanctions "have concluded that these humanitarian exemptions do not have this effect and, moreover, the exemptions are very limited in scope". In addition, the study prepared by Ms. Graça Machel on the impact of armed conflict on children stated that "humanitarian exemptions tend to be ambiguous and are interpreted arbitrarily and inconsistently ... delays, confusion and the denial of requests to import essential humanitarian goods cause resource shortages ...".

- In its observations contained in document CRC/C/15/Add.94, the Committee on the Rights of the Child noted that "the embargo imposed by the Security Council has adversely affected the economy and many aspects of daily life, thereby impeding the full enjoyment by the State party's population, particularly children, of their rights to survival, health and education".

- In document CERD/C/240/Add.3 of 1999, the Committee on the Elimination of Racial Discrimination noted that the difficult socio-economic situation prevailing in the country due to the war, the economic sanctions and foreign military intervention in various regions of the country had caused tremendous human suffering and the destruction of part of the basic infrastructure had adversely affected the full implementation of human rights instruments.
- In document CEDAW/C/2000/II/Add.4, the Committee on the Elimination of Discrimination against Women noted that the comprehensive sanctions regime imposed on Iraq had adversely affected the lives of the people and had led to a considerable increase in child and maternal mortality and in the incidence of cancers, including leukaemia.

In the light of the above, we find that the Commission on Human Rights resolution totally disregarded the observations of the treaty-monitoring bodies concerning the situation of human rights in Iraq resulting from the embargo. The States which sponsored the resolution should have been honest in dealing with this aspect instead of holding the Government of Iraq solely responsible for the fulfilment of its obligations under the terms of international human rights instruments and ignoring their corresponding and reciprocal obligations under those instruments.

3 With regard to the operative paragraphs of the resolution, in operative paragraph 2 the resolution's sponsors "noted with dismay that there had been no improvement in the situation of human rights in the country".

This observation implies deliberate disregard of the true situation of human rights in Iraq and the adoption of double standards and a non-objective approach when making observations, since the real and grave violation to which the people of Iraq are being subjected consists in the ongoing comprehensive economic embargo which has been imposed on them for more than 10 years and which has deprived the Iraqi people of their basic rights, particularly their rights to life, food and health, as confirmed in many reports of United Nations agencies and treaty-monitoring bodies. In this connection, we wish to refer to the legal study on the detrimental effects of economic sanctions on the enjoyment of human rights, published by the Sub-Commission on the Promotion and Protection of Human Rights in document E/CN.4/Sub.2/2000/33, which states that: "The sanctions against Iraq are the most comprehensive, total sanctions that have ever been imposed on a country. The situation at

present is extremely grave. The transportation, power and communication infrastructures were decimated during the Gulf War and have not been rebuilt owing to the sanctions. The industrial sector is also in shambles and agricultural production has suffered greatly."

The study further states that: "The sanctions regime against Iraq is unequivocally illegal under existing international humanitarian law and human rights law. Some would go as far as making a charge of genocide." The study also notes that: "The sanctions regime against Iraq has as its clear purpose the deliberate infliction on the Iraqi people of conditions of life calculated to bring about its physical destruction in whole or in part." Finally, the study concludes that: "The strict measures stipulated in international humanitarian law for the protection of civilians in armed conflict is applicable to the sanctions regime and its instigators, and violations of those laws can be prosecuted as war crimes."

However, the most alarming aspect is the health crisis that has appeared as a result of the imposition of sanctions, the gross violations to which the Iraqi people are being subjected every day as the whole world is aware, and the daily aerial bombardments by United States and British aircraft on the pretext of protecting the illegal so-called "no-fly zones" to which hundreds of civilian women and children have fallen victim.

4. Operative paragraph 4 (k) calls upon Iraq to cooperate further with international aid agencies and non-governmental organizations to provide humanitarian assistance and monitoring in the northern and southern areas of the country.

In this connection, we wish to refer to the letter dated 30 April 2001 from the Minister for Foreign Affairs of the Republic of Iraq, addressed to the Secretary-General of the United Nations, which indicates that, in the year 2000 alone, the Government of Iraq issued 991 entry visas to United Nations personnel working within the framework of the Memorandum of Understanding. While realizing that the number of applications for entry visas was excessive, being greater than the volume of work accomplished and in excess of actual needs, particularly in the northern governorates, the Iraqi authorities did not wish to delay the issue of any visa and merely notified the Office of the Humanitarian Coordinator in Iraq and the Office of the Iraq Programme that this excessive use of experts and technical specialists, including even carpenters and international telephone exchange operators, was an improper practice which depleted the resources of the Memorandum of Understanding without justification, particularly as Iraq had experts and specialists, whose expertise could be used, instead of foreign experts and specialists, in the programme activities.

The programme implementation record in the three northern governorates of Iraq shows that the dispatch of armies of international experts, specialists and technicians has not led to any significant improvement in programme performance.

During the last three months, the number of foreign experts dispatched to Iraq has increased notably and many cases have been documented in which international personnel have been dispatched, not with a view to enhancing the programme activities, but solely in order to reward them or solve financial problems from which they were suffering or because they were relatives or friends of officials responsible for the implementation of the programme. In this connection, it is noteworthy that the implementation of the Memorandum of Understanding has led to the presence of hundreds of United Nations personnel in Iraq and the Government of Iraq has recorded numerous serious violations of the national and economic security and laws of Iraq by the Office of the Iraq Programme and the personnel of United Nations agencies, as illustrated by the following:

- The Office of the Iraq Programme and some United Nations agencies operating in Iraq have distributed political statements and manifestos by fifth-columnist groups in northern Iraq.
- Some United Nations agencies operating in the three northern governorates have collaborated with non-governmental organizations which entered Iraq illegally with a view to undermining its security and territorial integrity under the cover of humanitarian activities.
- Some United Nations personnel have smuggled valuable antiquities and property outside Iraq.
- Some United Nations personnel have failed to respect the values, customs and traditions of Iraqi society.

In March 2001, these violations prompted Mr. Ton Myat, the United Nations Humanitarian Coordinator in Iraq, to draw the attention of the United Nations agencies operating in Iraq to the need to show due regard and respect for Iraq's sovereignty and territorial integrity. He also called upon the heads of the international agencies operating in Iraq's three northern governorates to ensure that their staff complied with the conditions laid down in the

Memorandum of Understanding in order to guarantee the successful discharge of their functions in Iraq. He warned them against any infringement by the staff of their agencies which would constitute a violation of the conditions of the Memorandum of Understanding.

5. Operative paragraph 4 (l) calls upon the Government of Iraq to cooperate, together with all concerned, in the equitable distribution of humanitarian supplies and to facilitate the work of United Nations humanitarian personnel by ensuring the free and unobstructed movement of observers.

This allegation is unfounded. All the reports of the Secretary-General of the United Nations, the most recent of which is the report S/2001/186 of 2 March 2001 (para. III.C), indicate that Iraq is cooperating in the implementation of the programme. The international observers have carried out about 750,000 operations and have not reported any shortcoming on the Iraqi side nor any diversion of materials from the beneficiaries or end-users.

The Government of the Republic of Iraq wishes to highlight the reasons why the Memorandum of Understanding concluded between Iraq and the United Nations in accordance with resolution 986 (1995) was voided of its humanitarian content.

The Memorandum of Understanding has so far passed through nine phases and has been in operation for more than four years. The Government of Iraq has diligently endeavoured to abide by the provisions of the Memorandum as a temporary and exceptional measure designed to alleviate the sufferings of the Iraqi people due to the embargo. The Government of Iraq has also cooperated fully with the United Nation agencies in discussing and determining the needs of the sectors covered by the distribution plan in the hope that the urgent needs of the Iraqi people would be met within the time-frame of each phase.

By 14 February 2001, the income arising from the Memorandum of Understanding amounted to more than US$ 39 billion, of which 13.7 billion were deducted for purposes far removed from the humanitarian aims for which the programme was set up. These deductions were: $11.7 billion for compensation and $1.1 billion to cover United Nations expenses. At all events, Iraq received goods and equipment amounting to a value of only $9.9 billion. The remaining $11.4 billion, deposited with the French bank maintaining Iraq's account, represented the value of the contracts which had either been placed on hold by the United States of America and the United Kingdom or were held pending by the Office of Iraq Programme or awaiting the issue of letters of credit.

From the outset, the United States of America and the United Kingdom have deliberately sought to void the Memorandum of Understanding of its humanitarian objectives in an assiduous endeavour to harm the Iraqi people and aggravate their sufferings. This policy consisted in placing contracts for humanitarian supplies on hold or blocking them for political motives, even though those contracts met the conditions laid down by the United Nations Secretariat in document S/1998/92, paragraph 4 (b) of which stated that the United Nations Secretariat would screen and review applications and circulate all applications that met the requirements of the Committee's procedures and were consistent with the distribution plan. In spite of the fact that all the other members of the 661 Committee had approved those contracts, the United States and British representatives put forward invalid reasons for placing them on hold. For example, they have placed some contracts on hold on the pretext that they involved materials that were subject to the provisions of resolution 1051, even though the Office of the Iraq Programme affirmed the contrary, and they have placed other contracts on hold on various pretexts while approving contracts involving similar materials of different origin, thereby clearly showing that they had problems with, or political aims to be achieved through, the States submitting the contracts. Even a contract for the purchase of live bulls (contract No. 600787) was put on hold on the pretext of its dual-purpose nature. An even more detrimental aspect lies in the fact that the contracts placed on hold complement other contracts previously approved for the same project, thereby preventing Iraq from using the goods and equipment covered by the contracts that have been approved.

Although their inhuman conduct has led to international protests, including the resignations of Mr. Denis Halliday, Mr. Hans von Sponeck and Mrs. Jutta Burghardt (the representative of the World Food Programme in Iraq), the United States of America and the United Kingdom are constantly intensifying their policy of placing contracts on hold. By 11 May 2001, a total of 1,690 contracts relating to phases IV-IX of the Memorandum of Understanding and amounting to a total value of $3.7 billion were on hold, the United States of America and the United Kingdom having paid no heed to the Security Council's appeal, in paragraph 9 of resolution 1330 (2000), for the 661 Committee to reduce the number of contracts placed on hold.

6. In operative paragraph 4 (m), the resolution's sponsors emphasize the need for the Government of Iraq "to cooperate in the identification of the minefields existing throughout Iraq".

In this connection, the Government of the Republic of Iraq wishes to shed light on some facts. A study of the mine clearance operations in the northern governorates has revealed the total failure and wasteful extravagance of the United Nations activities in this regard. In reality, more than $80 million have so far been appropriated to this programme, while only 3,450 mines have actually been cleared. This means that the clearance of each mine costs more than $22,000 (more than 20 times higher than the normal average cost). This high cost is attributable to numerous factors, including the salaries, travel expenses and costly vehicles of the large army of so-called "experts" working on this programme, not to mention their communication equipment (six wireless communication devices per person). During the period from November to December 2000 alone, the Ministry of Foreign Affairs received applications for the issue of entry visas to 63 international experts assigned to work on this project. Moreover, the 28 dogs which were brought to Iraq to help to locate minefields entailed additional expenditure, such as the costs of providing a trainer, a handler for each dog and a special vehicle for each two dogs. Until recently, tons of food were imported from abroad for these dogs. These facts prompted the Secretary-General of the United Nations to note, in one of his reports, that the mine clearance operation in northern Iraq might last for 75 years.

These facts unquestionably illustrate the extent to which the Government of Iraq is cooperating in spite of the illogical procedures and requests of the United Nations and the unreasonable costs, which are depleting the funds available to Iraq under the Memorandum of Understanding. However, the resolution's sponsors deliberately disregarded all this in an endeavour to hide the truth and mislead the other States members of the Committee.

7. Operative paragraph 4 (j) refers to the question of Kuwaiti missing persons, allegedly including prisoners of war. In this connection, we wish to state that the use of the term "prisoners of war" is incorrect, since the legal term used to designate the persons on whom Kuwait submitted files is "missing persons", as indicated by the fact that the International Committee of the Red Cross uses this term when referring to the Kuwaitis and Iraqis reported

missing during the events of 1991, bearing in mind the fact that Iraq's fulfilment of its obligations in regard to the question of prisoners was certified by the ICRC in the informal paper which it circulated at the United Nations in 1998 and which stated that Iraq had released 4,000 prisoners of war and 1,300 civilian detainees of Kuwaiti and other nationalities after the 1991 ceasefire.

However, the Commission on Human Rights seems to have been so eager to use terminology conducive to the politicization of this humanitarian issue that some of the references made in this paragraph to the need to release prisoners of war, to inform their families about their whereabouts, to provide information about death sentences allegedly imposed on some of them and to issue death certificates went far beyond anything that Kuwait or its allies would have ventured to raise in any international forum. It would have been more appropriate for the Commission on Human Rights to, at least, respect the Security Council resolutions and the ICRC reports when dealing with this humanitarian issue in order to conceal its politicization, total bias or ignorance in this regard.

In this connection, we should make it clear that Iraq has cooperated diligently with a view to solving the issue of the Kuwaiti missing persons. However, Iraq's subjection to aggression by the United States of America and the United Kingdom in December 1998 prompted it to demand the exclusion of those two States from the work of the Tripartite Commission and its Subcommittee since, in actual fact, they had no missing persons and were consistently endeavouring to politicize the work of those two bodies. The best evidence of Iraq's cooperation was the settlement of the question of the Saudi pilot, whose remains were found during a combined operation by Iraq, Saudi Arabia and the ICRC, and the manner in which Iraq cooperated in the renewed efforts made by the ICRC at the beginning of the present year to trace the missing Iraqis and Kuwaitis on a bilateral basis through the ICRC delegations at Baghdad and Kuwait.

When dealing with this humanitarian issue, the Commission on Human Rights applied double standards by making a malicious political reference to the question of the Kuwaiti missing persons while deliberately omitting to refer to the question of the 1,142 Iraqi missing

persons (double the number of the missing Kuwaitis) who are officially registered with the ICRC and the Tripartite Commission. It should also be noted that Mr. Mavrommatis, the Special Rapporteur of the Commission on Human Rights, dealt with the question of the Iraqi missing persons in a fairly detailed manner in his report and made representations to the Government of Kuwait in this regard.

In the same paragraph, Iraq is called upon to pay compensation to the families of persons who died or disappeared during the operations. In this connection, we wish to point out that, notwithstanding Iraq's strong reservations concerning the manner in which the United Nations Compensation Commission was established and the general working procedures that it is applying, and notwithstanding Iraq's reservation concerning the question of payment of compensation to the families of missing persons, particularly since the principles of international law make no provision for such compensation, the Compensation Commission arbitrarily decided to pay an amount of $177,109,000 (far more than the amount of $111,483,429 claimed by the Kuwaiti authorities) to the so-called Kuwaiti National Committee for Missing and Prisoner of War's Affairs (see document S/AC.26/1999/24). The disregard that the drafters of that paragraph showed for the true facts concerning this issue means one of two things: either they were unaware of the true state of affairs or their deliberate reference to this issue was motivated by malicious political objectives.

From the above and the documented facts set forth in this note, it is evident, beyond any shadow of a doubt, that the resolution on the situation of human rights in Iraq is unbalanced and highly selective, applies double standards and is based on imprecise and exaggerated allegations designed to distort the facts. The resolution's sponsors misused the rostrum of the Commission on Human Rights by politicizing its noble causes with a view to defaming and harming States in furtherance of narrow-minded political objectives which will definitely not promote the lofty principles of human rights. It is ironical that Israel co-sponsored the draft resolution given its indescribable record of violating the human rights of the Palestinian people against whom it has committed crimes that exceed those perpetrated by the Nazis.

Annex showing the subject matter of the Security Council resolutions referred to in the Commission on Human Rights resolution on the situation in Iraq

	Resolution No.	Date	Subject matter
1	686	2 March 1991	Notes the suspension of offensive combat operations; demands that Iraq implement the 12 relevant Security Council resolutions and release Kuwaiti prisoners of war; and welcomes the decision taken by the Coalition States to release Iraqi prisoners of war.
2	687	3 April 1991	Specifies the ceasefire conditions; establishes a Special Commission to eliminate weapons of mass destruction; and also establishes a Compensation Fund.
3	986	14 April 1995	Authorizes Iraq to sell $2 billion worth of petroleum every 180 days in order to purchase food and medicine.
4	1111	4 June 1997	Extends the "oil-for-food" programme (phase II).
5	1129	12 September 1997	Splits the 180-day petroleum exportation period into two periods of 120 and 60 days so that Iraq can export the quantities of petroleum needed for phase II in accordance with resolution 1111 (1997).
6	1143	4 November 1997	Extends the "oil-for-food" programme (phase III).
7	1153	20 February 1998	Authorizes the exportation of the quantities of petroleum needed to secure an amount of up to $5.652 billion during a period of 180 days (phase IV).
8	1175	19 June 1998	Authorizes States to export to Iraq the necessary parts and equipment, up to a total of $300 million, to enable Iraq to increase the export of petroleum and petroleum products; decides that the funds deposited can be used to meet any reasonable expenses arising from approved contracts; and notes that the distribution plan agreed between Iraq and the United Nations will remain in effect.
9	1210	24 November 1998	Decides that the provisions of resolution 986 (1995) will remain in force for a further period of 180 days (phase IV); authorizes, on the basis of specific requests, reasonable expenses related to the Hajj pilgrimage, to be met from funds in the escrow account; and requests the Secretary-General to report on whether Iraq had ensured the equitable distribution of medicine and health supplies.

	Resolution No.	Date	Subject matter
10	1242	21 May 1999	Extends the "oil-for-food" programme for a further period of six months (phase VI).
11	1266	4 October 1999	Authorizes a rollover sufficient to generate an additional sum of $3.04 million.
12	1281	10 November 1999	Extends the "oil-for-food" programme for a further period of 180 days beginning on 12 December 1999.
13	1284	17 December 1999	Decides to establish a new body, known as the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), to replace UNSCOM, and makes provision for the establishment of a new financial control mechanism to monitor petroleum exports.
14	1302	8 June 2000	Extends the "oil-for-food" programme (phase VIII).
15	1330	5 January 2000	Extends the "oil-for-food" programme (phase IX).